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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,600	03/11/2004	Juan-Picr Antonio Spampinato	005127.00270	3894
22909	7590	03/29/2006	EXAMINER	
BANNER & WITCOFF, LTD. 1001 G STREET, N.W. WASHINGTON, DC 20001-4597			BONANTO, GEORGE P	
			ART UNIT	PAPER NUMBER
			2855	

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Advisory Action Before the Filing of an Appeal Brief	Application No. 10/797,600	Applicant(s) SPAMPINATO ET AL.	
	Examiner George P. Bonanto	Art Unit 2855	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 10-12, 14-17 and 34-38.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE


8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.


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Continuation of 11. does NOT place the application in condition for allowance because: Applicants arguments are not persuasive. Specifically, Applicants argue that the rejection failed to provide motivation for the combination relied upon. This argument is not persuasive because the rejection provided motivation for the combination. Applicants further argue that the motivation provided by the examiner is defective because the examiner did not prove that the combination would result in an improvement over the element of the base reference. This argument is not persuasive because proof of such an improvement is not required for proper motivation to combine references. Applicants further argue that the proposed modification would render the prior art invention unsatisfactory for its intended purpose. This argument is not persuasive because modifying the streamlined support structure of Demay to include the tear-drop shape of Meyer would not make it unsatisfactory for use in wind tunnel tests. To the contrary, the tear-drop shape of Meyer would ensure the structural strength of the support in the direction of the on-coming wind. Applicants further argue that the combination is the result of hindsight picking and choosing. This argument is not persuasive because it is clear that the motivation given in the rejection, which is supplied by the secondary reference, was not gleaned from Applicants disclosure. Applicants further argue that Meyer is non-analogous art, and that one of ordinary skill would not look to Meyer in order to solve problems pertaining to support structure for wind tunnel testing. This argument is not persuasive because both Demay and Meyer relate to support structures operating in a high wind environment, and both are concerned with the effect of the shape of the support structure on its structural integrity and its effect on a flow of air around the support.


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